

SUSAN D. SNYDER

IBLA 72-247

Decided January 16, 1973

Appeal from a decision of the Montana State Office, Bureau of Land Management, requiring that special stipulations be executed as a precondition to the issuance of an oil and gas lease covering certain acquired lands under the administration of the Forest Service. M-18968 (ND).

Dismissed.

Oil and Gas Leases: Acquired Lands—Oil and Gas Leases: Applications: Generally—Oil and Gas Leases: Consent of Agency

Before an oil and gas lease for federal acquired lands can issue, the consent of the agency administering the surface is required by statute, and an applicant for such a lease must execute any special stipulations required by the administering agency as a condition to the giving of its consent. In such cases the Department of the Interior has no jurisdiction to waive execution of the special stipulations or to alter the terms thereof.

APPEARANCES: Susan D. Snyder, pro se.

OPINION BY MR. STUEBING

Susan D. Snyder has appealed from the decision of the Montana State Office, dated December 23, 1971, which required that she execute two copies of special stipulations imposed by the Forest Service as a condition to the giving of its consent to the issuance to her of an oil and gas lease covering certain acquired lands in North Dakota which are under the administration of the Forest Service.

The special stipulations are:

The lands embraced in this lease being under the jurisdiction of the Secretary of Agriculture, the lessee hereby agrees:

1. The Forest Service has not made the necessary resource and environmental studies on these lands for a final decision regarding full oil

and gas leasing activities. Consequently, this lease does not authorize any surface occupancy or surface disturbance.

2. If the lessee requests Forest Service approval of surface occupancy or disturbance at least 12 months in advance of any planned operation, the Forest Service will study those specific areas, if funds and manpower are available. There is no assurance given that any surface occupancy or disturbance will be allowed by the Forest Service because a study may not be completed, or if so, the study findings may show that it would be in the public interest to not have such occupancy or disturbance. Directional drilling is permitted by virtue of this lease from points outside these tracts as agreed to by District Ranger.

Appellant contends that the stipulations are arbitrary and unreasonable, not required by statute or regulation, would deprive her of the use and benefit of the lease, and require her to pay delay rental "for a piece of paper giving her no rights whatsoever", contrary to the intent and actual provision of the Mineral Leasing Act of February 25, 1920.

We first observe that the land in question is not public land of the United States and, therefore, is not subject to leasing under the Act of February 25, 1920. These are federally acquired lands, which are available for leasing only under the Acquired Lands Leasing Act of August 7, 1947 (61 Stat. 913; 30 U.S.C. 351-359 (1970)). Section 3 of the act provides, in pertinent part, that:

* * * No mineral deposit covered by this section shall be leased except with the consent of the head of the executive department, independent establishment, or instrumentality having jurisdiction over the lands containing such deposit, * * * and subject to such conditions as that official may prescribe to insure the adequate utilization of the lands for the primary purposes for which they have been acquired or are being administered. * * *

This provision of the statute is also a feature of the regulations of this Department. See 43 CFR 3109.3-1 (1972).

This Board has affirmed the right of the head of the agency administering acquired lands to impose special stipulations as a condition to the giving of his consent to lease acquired lands for oil and gas even where it appeared to this Board that the stipulations were unreasonable. Duncan Miller, 5 IBLA 364 (1972). In such cases the Department of the Interior is without jurisdiction to waive execution of the special stipulations required by another agency, or to alter the terms thereof. Duncan Miller, supra; cf. Duncan Miller, 6 IBLA 216 (1972), involving public land, as distinguished from acquired land.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal is dismissed.

Edward W. Stuebing, Member

We concur.

Anne Poindexter Lewis, Member

Martin Ritvo, Member

